

**Tom
Berns**
for State Representative
104th District

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APR 11 3 13 PM '00

March 30, 2000

General Counsel's Office
FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

**RE: MUR 4988
RESPONSE TO COMPLAINT OF JOSEPH WHELAN**

In response to the "request to investigate a complaint" from Joseph Whelan, Tom Berns for State Representative believes there is no violation of federal election law, and asks that the matter be dismissed without further action being taken. The Tom Berns for State Representative committee is a state political committee in Illinois and did advertise and mail get-out-the-vote materials having a federal candidate mentioned in them. This was done to identify that the state candidate as running for a different office than the federal candidate, who is the current eleven (11) term holder of the state General Assembly seat being sought by Tom Berns.

The Tom Berns for State Representative committee denies that the materials were an "ad for congressional candidate Tim Johnson." The State committee denies that it "has not segregated its corporate contributions as required by law." While the advertising and mailing material comprised more than \$1,000 in the aggregate, the amount potentially allocatable to the federal candidate is far less than \$1,000 and was not "in violation of 100.7", presumably 11 CFR 100.7.

The Tom Berns for State Representative committee agrees that there was no "notice that the communications are not authorized by the candidate or his authorized committee", but no such notice is required, or alleged to be required. The State committee admits that the expenditures were made "after the 20th day but not more than 24 hours before the day of the election", but the State committee is not a "federal political committee" and the amount allocatable to the federal candidate was far less than \$1,000. Therefore, the State committee believes it is not a "federal political committee" as defined at 2 U.S.C. 431 (4), 37 CFR 100.5, and therefore not subject to the federal filing requirements.

Advertising for the campaign included reference to the federal candidate NOT to benefit the federal candidate, but to wholly benefit the state candidate, as is the purpose of the state committee. The purpose of the mailing and advertising was to identify the two candidates as separate, and to get-out-the-vote for Tom Berns for State Representative. The focus was not on promotion or election of the federal candidate.

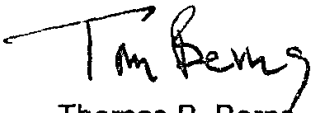
Rural voters had been confused about which candidates were running for which office. The federal candidate had been in the state representative position for more than twenty years. His loyal supporters indicated that they would not vote for another candidate. These efforts identified the federal candidate and the state candidate, both of which received endorsements from the local committees of the political party. The advertising and mailing clearly identified that they were paid for by the state committee.

Because the federal candidate was not the beneficiary of the materials, "mention of such candidate is merely incidental to the overall activity," these expenditures should also be exempt from the filing requirements under 11 CFR 100.7(b)(17)(iv). The State committee was not trying to benefit the federal candidate, as the federal candidate has spent much more money on the primary election and does not need our assistance.

The Tom Berns for State Representative committee believed there was no requirement to file as a federal "political committee" and has used their best efforts to obtain, maintain and submit the information required by the Act, which should meet the requirements (2 U.S.C. 432(i), 11 CFR 104.7). If there is a finding of probable cause of a violation, the Tom Berns for State Representative committee is willing to enter into a conciliation agreement to comply with any filing requirement. We would then ask for an advisory opinion on the amount allocatable to the federal candidate.

We will cooperate with any investigation, but worry that continued unsubstantiated rumors may be detrimental to the State Candidate in the general election in November. Thus, we would like to resolve this matter as soon as possible.

Respectfully Submitted



Thomas B. Berns
Candidate for State Representative
104th District - Illinois